IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6460 OF 2006

Bombay Forgings Limited .... Petitioners
Vs.
PTD Fasteners Private Limited
& Anr. .... Respondents

Sarvasri Phiroze Palkhiwala with Dinesh Pednekar i/b M/s. PDS Legal for the Petitioners.

Shri P.S. Dani for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 16, 2006

P.C:

1. The petitioners challenge the order dated 3-5-2006 passed by the trial Court and the order dated 28-6-2006 by the revisional Court in T.E. & R. Suit No.135/153 of 2001 and Revision Application No.44 of 2006 respectively. The orders are in relation to the application filed by the petitioners objecting to the affidavit which has been admitted along with the report in evidence allegedly without inviting the say of the petitioners on the proof and admissibility thereof. Undisputedly, the affidavit along with the report was admitted on 8-2-2006 and the application objecting to such admissibility was filed on 1-3-2006. In the application thereof, it was categorically stated that

> "A Report dated 07 February 2006 prepared by Messrs Kirit Mehta & Co. under the signature of Kirit B. Mehta, PW2 has been tendered along with the said affidavit evidence and the said Report has been admitted in evidence and marked as an exhibit without inviting the Defendants say on the proof & admissibility thereof."

The contention of the petitioners is that the report annexed to the affidavit contains opinion on the point of law and which is not admissible in evidence and yet the same has been admitted.

2. There is nothing on record to disclose that the petitioners had, in fact, objected to the admissibility of the affidavit and the report at the time the affidavit was taken on record and admitted in evidence and marked exhibit therein. It is only after about twenty days therefrom that the petitioners had filed the application objecting to the admissibility of the affidavit and the report annexed thereto. Perusal of the copy of the affidavit and the report discloses that the same not only contains alleged opinion of the deponent on the point of law but the same also includes various facts. It is the contention of the learned

Advocate for the petitioners that the same does not disclose the source of knowledge regarding the facts and the expert cannot claim to have personal knowledge of those facts. Undisputedly, in this regard, nothing prevents the party from cross-examining the deponent, but that by itself cannot be a ground for interference in the impugned orders and further to direct the affidavit and the report not to be admissible in evidence.

3. Considering the fact that the report undoubtedly contains the expression of opinion on law points, suffice to observe that the trial Court while disposing the matter and while assessing the entire evidence on record will have to consider the same and has to consider the probative value of affidavit while appreciating the evidence. Apart from these observations, no further interference is called for as in the facts and circumstances of the case, it cannot be said that the Courts below have committed any jurisdictional error in dismissing the application filed by the petitioners on 1-3-2006. The petitioners' interest can be well protected by directing the trial Court to consider the probative value of the affidavit and the report while assessing the evidence and therefore no further interference is called for in the impugned orders. Hence, with the above observations,

the petition is rejected.

(R.M.S. Khandeparkar, J.)

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